

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 1-5 and 9-12 are rejected under 35 U.S.C. 102(b) over the U.S. patent to Miller, et al.

Claims 6-8 are not rejected over the art and indicated by the Examiner as being allowable.

The Examiner's indication of the allowability of claims 6-8 has been gratefully acknowledged. In connection with this indication applicants submitted claims 14, 15, and 16 which correspond to original claims 6, 7, and 8 and include the features of the intervening claims. It is believed that claims 14-16 should be considered as being in allowable condition.

The specification has been amended in formal aspects to provide corresponding headings and a reference to priority applications, and a new Abstract of the Disclosure has been provided.

After carefully considering the Examiner's grounds for the objection of the claims over the art, applicants canceled claims 1-4 and submitted new

claim 13, while the dependent claims have been retained or amended to depend on this claim directly or indirectly.

An important feature of the present invention as defined in claim 13 is that the supporting bearing is composed of spring steel, and also that the supporting bearing contains at least one band-shaped bearing element. It follows therefrom that not only the supporting bearing is detachably connected to the module 1, but that it is the band-shaped element 5, 6 which is detachably mounted to the module 1 as clearly disclosed in Figures 3 and 4 of the present application.

The important advantages resulting from the detachable connection of the present invention are disclosed for example on page 3, lines 12-14 and page 8, line 24 through page 9, line 3 of the specification. The use and advantage of the band-shaped bearing elements are disclosed for example on page 3, lines 5-11 and page 8, lines 6-12.

Claim 5 is directed to the feature that the supporting bearings are made from two band-shaped bearing elements 5 and 6 as particularly shown in Figure 4. A further important advantage resulting from such a design is for example disclosed on page 8, lines 12-15 of the specification. By using pairs of band-shaped elements it is possible to provide a redundant system in such a

manner that even in case of a breakage of one of the elements an emergency operation of the vehicles is still possible by means of the other element.

Turning now to the Examiner's grounds for the rejection of the claims and in particular over the patent to Miller, et al, it is respectfully submitted that the Examiner's remarks with reference to this reference are not understood. The reference deals with the mounting of so-called equipment parts (as explained for example column 3, lines 47-51 or column 5, lines 21-24 of the reference) to a track (= driveway or the modules thereof) at attachment locations. Contrary, the invention is directed to the mounting of a track (=driveway or the module thereof) to a supporting structure (as explained for example on page 1, lines 4 through page 2, line 29 of the specification of the present application). The Examiner argues that the track or the driveway modules of the present invention are the same as the equipment parts of the reference and that the supporting structures of the present invention are the same as the tracks of the reference. In applicant's opinion such a comparison is not correct.

The equipment parts of the reference may be, for example, lateral guide rails 11 or magnetic coil devices (stator plates) 12. As shown in Figure 9 of the reference, the track for guiding the vehicle 23 comprises parts 8 (=driveway modules) being positioned on carriers 22 or the like (= supporting structure). According to Figure 1 and 1c, the track is designated as a whole with reference

numeral 1, and according to column 3, lines 47-60 and Figures 2, 2A, 3 and 3A, the stator plates 12 as well as the guide rails 11 are mounted to the track 1 by means of mounting bodies 3, spacer bushings 5 (also being named as collets in column 3, line 60), bolts 4 and nuts 6.

It is therefore must be concluded that, contrary to the invention, the reference discloses and deals with the mounting of equipment parts 11, 12 to a track 1 or the modules 8 thereof, but not with the mounting of the track 1 or the modules 8 to the supporting framework 22 as particularly shown in Figure 1 or the modules 8 to the supporting framework 22 as particularly shown in Figure 1 of the present application. It is again to note in this respect that on the one hand the equipment parts can not be designated as driveway modules and that on the other hand the reference does not mention the particular mounting of the track 1 on the supporting framework 22 (Figure 9 of the reference).

In addition, the bushings 5 (also called collets in the reference) can not be compared with the band-shaped bearing elements 5, 6 of the present invention (see page 2, second paragraph from the bottom of the office action). With other words, a bushing has the form of a hollow cylinder and is, therefore, never band-shaped. The bushings or sleeves 5 serve in the reference for fixing the equipment parts 11 and 12 with a proper distance from the driveway or the blocks 13 thereof and can not at all function as a movable bearing element in the

sense of the present application. Further, nothing in the reference is said with respect to the question whether or not the driveway modules (or even the equipment parts) are mounted in a movable manner and in such a manner that a compensation for the otherwise inevitable deformations of the modules is possible (see for example page 3, lines 5-11 of the specification). It may be added insofar that the present invention deals with fastening devices in the form of movable or fixed bearings (paragraph bridging pages 7 and 8 of the specification) in order to mount the driveway modules to a supporting framework, but not with the mounting of parts whatsoever to the driveway by means of bushing elements or the like of whatever material.

Therefore, if the reference is correctly interpreted, it must be concluded that the reference deals with quite other problems (and therefore solutions) and that the reference gives not the slightest hint with respect to a movable band-shaped bearing element made from spring steel for a track module and a detachable connection thereof to the module. It follows from the above that even if the Examiner's conclusion at page 2 of the Official Letter would be correct, his statement fails to show that the "band shaped collect and metal sheet bushing" of the reference is used as a movable bearing in the sense of the present application.

It is believed to be clear that the new features of the present invention which are now disclosed in claim 13 are not disclosed in the patent to Miller, et al.

The original claims were rejected over this reference as being anticipated. In connection with this it is believed to be advisable to cite the decision in *re Lindenman Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely the patent to Miller does not disclose each and every element of the driveway for magnetically levitated vehicle in accordance with the present invention as defined in claim 13.

As explained herein above, the present invention provides for the highly advantageous results which can not be accomplished by the construction disclosed in the reference. It is well known that in order to support a valid rejection in the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case *Ex parte Tanaka, Marushma and Takahashi* (174 USPQ 38), as follows:

Claims are not rejected on the ground that it would be obvious to one of ordinary skill in the art to rewire prior art devices in order to accomplish applicant's result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

In view of the presented remarks and amendments, it is believed that claim 13 should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on claim 13, they share its presumably allowable features, and therefore it is respectfully submitted that they should be allowed as well.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance; he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,



Michael J. Striker
Attorney for Applicants
Reg. No. 27233